

No. 12198.

IN THE

United States Court of Appeals FOR THE NINTH CIRCUIT

STATE OF CALIFORNIA, Department of Employment,

Appellant,

vs.

FRED S. RENAUD & Co., Debtor, and GEORGE GARDNER,
Receiver of the Estate of FRED S. RENAUD & Co.,
Debtor,

Appellees.

BRIEF FOR APPELLEES.

Appeal from the United States District Court for the
Southern District of California
Central Division

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BRIEF FOR APPELLEES.

Statement of Facts.

The agreed statement on appeal shows all the facts necessary to the consideration of the issue of this appeal.
[Tr. p. 2.]

"THE LEGAL QUESTION INVOLVED HERE CONCERNING THE CONSTRUCTION AND APPLICATION OF A CALIFORNIA TAX STATUTE HAS AT THE INSTANCE OF THE APPELLANT BEEN DETERMINED BY THE CALIFORNIA COURTS." Not on the theory of *res adjudicata*, but on the principle that where the State Court has determined the construction and application of a State Statute, the same will be accepted and taken as the law of the State when the question is presented in the Federal Court. It appears from the

agreed statement on appeal that the partnership was named Fred S. Renauld & Co., and was composed of Mr. and Mrs. Fred S. Renauld, husband and wife. The corporation of the same name, Fred S. Renauld & Co., Inc., was the incorporation of that business as formerly operated by the partnership. The corporate stock of the corporation was issued under a permit of the California Corporation Commissioner after an agreement between Mr. and Mrs. Renauld that it should be so issued, but that the stock remain the community property of the Renaulds. The entire ownership of the business under the partnership was in the Renaulds. The entire stock interests after the incorporation was in the Renaulds. As stated in Article 3 of the agreed statement on Transcript page 4, it was agreed:

“That there was no change in the type of the business or the place of business after it was transferred to the corporation and that the actual management of the business was conducted by the corporation through and by its sole stockholder Fred S. Renauld in the same manner as it had been conducted during the partnership operations;

“4. That the same employees, in general, performed services for the partnership; that the taxes both before and after July 1, 1946, all relate to the calendar year of 1946;”

The appellant here sought a decision construing and applying the California law here involved. The appellant selected the forum as it was the plaintiff in the case of *California Employment Commission v. Ransohoff's, Inc.* The ultimate opinion and decision in that case, was by the highest court to which the case was appealable. That court was the Appellate Division of the Superior Court, at San

Francisco, California. That fact is conceded by the appellant, page 18, appellant's brief:

"It may be conceded that the Appellate Department of the Superior Court is a court of final jurisdiction on appeal from the judgment of the Municipal Court. (Nelson v. Darling, 103 Cal. App. 523, 284 P. 1095; Johnston v. Wolf, 208 Cal. 286, 280 P. 980.)"

That the question there was the same one as is here is also conceded by the appellant, page 18, appellant's brief:

"The facts of the Ransohoff case are virtually identical with those in the matter before this court and, as here, involved the question of whether a new entity came into being when a corporation succeeded to a partnership."

The said Ransohoff judgment is a final judgment. After the adverse decision by "the little supreme court" the appellant attacked the decision of the Municipal Court by challenging its jurisdiction to try the case which it had instituted. The result is again conceded in the appellant's brief, page 21, where it says:

"Motion to vacate the judgment on grounds of lack of jurisdiction was denied on May 5, 1944."

Again it is conceded by the appellant that this appellate division of the Superior Court where its judgment is final is binding. We find this concession on page 19, appellant's brief:

"In the case, *In re Wiegand*, 27 F. Supp., p. 725, the Judge of the District Court, S. D. California, Central Division (1939) stated:

'In fact, the appellate department is known at the Bar as "the little supreme court," as to matters within its jurisdiction. Unless its decisions, therefore, should conflict with the district courts of appeal or with the Supreme Court of California, they are binding on all.'"

If a certified copy of the written opinion in the *Ransohoff* case can be obtained in time, it will be attached to and filed with this brief, otherwise it will be presented at the time of oral argument.

Conclusion.

After hearing of evidence, the Referee in Bankruptcy decided that the employer was the same and that when the corporation took over in the middle of a calendar year, that he by looking through the form saw the substance, and that it was the same employer, the same employees, the same manager, the same hours, the same working conditions. To hold otherwise would have been to permit double taxation. The District Judge agreed with the Referee and adopted his findings.

We respectfully submit that the court should find both of these judicial officers are correct, and confirm the decision now on review.

Respectfully submitted,

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